

Wednesday, 20 August 1947

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Chambers of the Tribunal
War Ministry Building
Tokyo, Japan

PROCEEDINGS IN CHAMBERS

on

Application on Behalf of the
Prosecution for an Extension of Time
within which to Present Witnesses.

Before:

HON. SIR WILLIAM WEBB
President of the Tribunal and
Member from the Commonwealth
of Australia

Reported by:

Antoinette Duda
Court Reporter
IMTFE

Appearances:

For the Prosecution Section:

Colonel A. T. Smirnov

Mr. S. Horwitz

For the Defense Section:

Mr. Ben Bruce Blakeney, Counsel for the
Accused TOGO, Shigenori, and UMEZU, Yoshijiro

Mr. George A. Furness, Counsel for the
Accused SHIGEMITSU, Mamoru

For the Secretariat:

Judge E. H. Dell, Legal Advisor

Mr. Paul M. Lynch, Clerk of the Court

The proceeding was begun at 0900.

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THE PRESIDENT: This is Paper 1121, an application on behalf of the prosecution for an extension of time within which to present certain witnesses, being TAKEBE, Rokuzo; MURAKAMI, Keisaku; MATSUURA, Kusuo; Budarin; Chernopyatko, and Batarshin, who are presently in the Soviet Union.

The prosecution say they are at remote points of the USSR and must be brought together to a center for transport to Tokyo, and that the time fixed by the Tribunal is not sufficient.

There are other witnesses presently engaged in work in connection with the preparation of the trial of Japanese war criminals in the Soviet Union who must remain until such work is completed.

The prosecution ask for an extension of time to the 17th of October.

Have you anything to say in support of that, Colonel?

COLONEL SMIRNOV (through Russian interpreter): If your Honor please, we request that the time limit within which to present the witnesses be extended for two more months, that is, until the 17th of October, presuming that it would be better to have them brought

over here somewhat earlier than to file one more petition to extend the time limit due to the great difficulties of transportation.

The time when the Tribunal took the decision on the attendance of witnesses and the last recess coincided with the period of time when we had no air communication with the USSR due to bad weather conditions. For these reasons, the decision of the Court was received in the Soviet Union with a certain delay. Some days ago I received a message to the effect that the witnesses TAKEBE, Rokuzo; MURAKAMI, Keisaku; MATSUURA, Kusuo; Budarin; Chernopyatko, and Batarshin, may be sent to Tokyo as soon as they are assembled in Moscow from different parts of the USSR. Thus, under most favorable circumstances, they may be brought to Tokyo within one or one and a half months.

With regard to other witnesses, the question will be decided upon additionally, since they are engaged in the preparation of the trials of Japanese war criminals.

If we succeed in bringing the witnesses here before the Tribunal before the two-month term expires, we will be glad to do so. However, in applying to the Court with the petition to grant us two more

months for the attendance of the witnesses, we take into account most unfavorable circumstances and ask for two more months, as during this period of time we shall secure the appearance of the said witnesses before the Court anyway.

THE PRESIDENT: And who appears for the defense?

MR. BLAKENEY: I appear.

THE PRESIDENT: What have you to say, Major?

MR. BLAKENEY: I have quite a lot to say.

I want to say, in the first place, that we have the utmost difficulty in believing this application is made in good faith. We are now told that the sixty days heretofore fixed by the Tribunal for bringing the witnesses has not sufficed. In explanation of that, we are told there has been no air communication with the Soviet Union. I remind your Honor that most of these witnesses -- I haven't stopped to tot them up -- are in the eastern part of the USSR, that is, Siberia; and I am reliably informed, although I cannot state as a fact, that members of the Russian prosecution staff were able to return during the recess to the USSR and come back to Japan, as well as the Russian Member of the Tribunal.

THE PRESIDENT: He has not come back yet.

MR. BLAKENEY: He hasn't come back. I am not advised of the facts in connection with transportation, but I think certainly they should be investigated before we accept at face value this allegation.

As far as concerns the other reason assigned for non-production of the witnesses within the period limited, that they are engaged in preparation of the trial of Japanese war criminals, I think that there also a fuller explanation is indicated. If that preparation means the preparation of their testimony, I should like to suggest two considerations: that they have apparently been engaged in that preparation since August 1945, slightly over two years; and, secondly, that since, so far as I can gather, it is the custom in the USSR to use testimony by affidavit, these witnesses could very readily testify in absentia there while testifying in person here.

We must never lose sight of the fact that this matter relates still to the prosecution case, which has been presumably closed for some seven months now. Parenthetically, I might say that seemingly the Soviet case never closes because the Tribunal still has under consideration a Soviet reservation made, I think, in March of an alleged right to produce additional evidence in chief when that evidence should

be made available from Moscow.

Now it is a question of postponing until the 17th of October the presentation of these witnesses who, I repeat, relate to the case of the prosecution in chief. It is perfectly clear that by the 17th of October not only will the general phases of the defense have terminated, but I think we may surmise that some number of individual phases will have terminated as well.

In this connection I want to point out that the witnesses here in question by their testimony involve fourteen defendants running the entire gamut of the alphabet, from ARAKI to UMEZU, so that if this application were granted and these witnesses were in fact brought here by the 17th of October there would be defendants involved by their testimony who would have completed their defense case without yet knowing what evidence they had to meet. In fact, we will never know what evidence we have to meet if these continual requests for postponement of the putting in of the case in chief are raised and granted. Until these witnesses appear and submit to cross-examination, not only can we not know what evidence we have to meet, but until we know whether they will ever actually come we cannot prepare our individual cases, either

defensively against them, or by way of making ready evidence in substitution for those parts of the affidavits of these witnesses which, being favorable to the defense, we ourselves made use of.

Here, in short, is a suggestion calculated to render it impossible for the defendants ever to feel any confidence that they can prepare the defense knowing what they have to meet, a suggestion calculated to bring about still further delay and to introduce still further confusion into the proceedings, and a suggestion, in my submission, without a trace of merit in it from anything heard here today, but a bold flouting of the order of the Tribunal, because I wish to point out the order of the Tribunal in this matter was in the following terms:

The prosecution was ordered to produce the witnesses "within a period of two months from this date," which was the 17th of June, "or, alternatively, to give convincing reasons within the said period why they are not able to produce the witnesses."

This document was filed on the 19th of August, which is sixty-three days after the 17th of June. By its very terms this order has become effective, and unless modification be made, which we strenuously object to, the Tribunal must now "disregard

the affidavits of any of the deponents in respect of whom the prosecution fails to comply with the present order." I am quoting the order, which means all of these witnesses in question.

Therefore, we want to object with all the earnestness we have to the attempt to keep this matter indefinitely and, so far as we can see, permanently open and to the granting of this application.

THE PRESIDENT: Colonel, do you wish to reply?

COLONEL SMIRNOV: Yes. Of course, it is up to the defense counsel to believe or not to believe. It is certainly true that some people left for the USSR, but none of them have come back so far; and the chief of our secretariat is in Vladivostok and has been staying there for over a month.

All these witnesses have to be brought to Moscow from various parts of the USSR and it is apparently being done now. In any event, it takes about fifteen days to get to Moscow from Vladivostok. It is very hard to make any predictions as to how long they will stay in Vladivostok waiting for good flying weather.

It is true that the petition was filed two days later, but on Saturday the Tribunal did not work

and on the 18th I turned this petition over to Mr. Keenan and it was filed on the 19th. The answer was ready on the 15th.

During these two months the question of the other witnesses will become quite clear. As to the witnesses which are about to be brought over here, I sent word to Moscow to bring them over here as soon as possible, and if we succeed in bringing them over here before this time expires, we will certainly present them before the Tribunal. But, in any event, within these two months we will be able to present them, and, therefore, I am asking for this time.

MR. BLAKENEY: Well, I should like to add a few words.

THE PRESIDENT: The Tribunal will receive and deal with an urgent application at any time. I am prepared to take any really urgent application at any time of the day or night anywhere in Japan, wherever I happen to be. I hope the staff will not be shocked. But that will affect only my own associate.

MR. BLAKENEY: I should like to say that I cannot understand the reference to having to take these witnesses to Moscow. The Tribunal's order was that they be brought to Tokyo from wherever they happen to be, most of them being in Khabarovsk or

Vladivostok or that area.

I want to repeat that quite aside from the question of late filing of this application, for which there is no reasonable excuse offered, it is simply impossible that this matter can be kept open indefinitely with the defense now fully in progress, with the individual defendants now in the course of processing the documents for their own defense.

Now, I do not think the reply of Colonel Smirnov has added anything whatever to the position except to show clearly that the purpose is more delay. If it is going to be an issue whether transportation between here and the USSR is possible, of course we will expect to demand that evidence be introduced on that question.

THE PRESIDENT: You may reply to that again, Colonel.

COLONEL SMIRNOV: Yes, your Honor.

The remark of my colleague that the defendants will not know what the testimony of these witnesses is about is wrong because their direct testimony is in. And I emphatically object to his statement that we are trying to delay the appearance of witnesses, because it is contrary to our interests; and he is forgetting + Moscow is 12,600 kilometers away from

Vladivostok or that area.

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Tokyo.

MR. BLAKENEY: A chap went around the world
the other day in sixty hours.

THE PRESIDENT: Well, you won't get these
witnesses in sixty hours.

MR. BLAKENEY: Nor in sixty days.

THE PRESIDENT: The decision is reserved.

(Whereupon, at 0930, the proceeding
was concluded.)

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